Ellsburg, Russo Seek Surveillance Ban

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By a Washington Post Staff Writer

LOS ANGELES, June 18—Daniel Ellsberg and Anthony Russo, claiming to have been followed night and day by government agents over the past year, have demanded that the products of any such surveillance be banned from use in their forthcoming trial here on conspiracy, theft and espionage charges.

"Virtually every public word defendants have uttered has been recorded or transcribed and scrutinized for possible evidentiary use," their lawyers contend in a legal memorandum filed in federal court.

Such surveillance, they insist, violates Ellsberg's and Russo's rights under the First, Fourth and Fifth amendments to the Constitution.

The defense lawyers were tipped off the the allegedly extensive surveillance only when the prosecutors in the case against them—growing out of disclosure of the top secret Pentagon Papers—submitted to the court a 600-page document that includes transcripts of and quotations from many public appearances by Ellsberg and Russo.

They say that such a thorough log could have been compiled only through systematic "governmental surveillance of assemblies, television and radio programs, press conferences and interviews and other forums before which they spoke."

The defense action came after Judge William Matt Byrne pleaded last week for a halt to motions and countermotions so he could make rulings.

Pretrial oral arguments got under way June 5 but the court has been recessed since Tuesday while the judge studies the lengthy briefs.

He is due to reconvene the court to hear pretrial arguments on three other motions. They include one by Russo seeking a stay of the trial and severance of Ellsberg's case.

Judge Byrne is expected to rule this week on a motion seeking a pretrial hearing in which the defendants seek to have 18 former government officials and newsmen give evidence that leaking of classified government documents is routine.

The defense contends that the indictment of Russo and Ellsberg is discriminatory prosecution.

Ellsberg and Russo are charged with stealing, embezzling and converting to their own use classified government documents relating to the national defense.